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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,256	07/30/2003	Malcolm Woods	RD8345USNA	9399

43693 7590 12/19/2005

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EXAMINER

SALVATORE, LYNDIA

ART UNIT PAPER NUMBER

1771

DATE MAILED: 12/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/630,256

Applicant(s)

WOODS, MALCOLM

Examiner

Lynda M. Salvatore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Response to Amendment***

1. Applicant's request for continuing examination (RCE), amendment and accompanying remarks filed 8/19/05 and 11/04/05 have been fully considered and entered. Claim 1 has been amended as requested. Applicant's amendment to claim 1 is found sufficient to overcome the 112 2<sup>nd</sup> paragraph rejection set forth in section 2 of the Final Office Action. As such, this rejection is hereby withdrawn. Applicant's remarks regarding the anticipation rejection of claims 1-3 and 8-9 set forth in section 4 of the last Office are found persuasive. Specifically, the prior art of Shinjou et al., US 4,728,394 does not teach a fabric consisting of a single layer. Rather, Shinjou et al., US 4,728,394 teach a fabric laminate comprising at least two layers. As such, this rejection is hereby withdrawn. However, upon further consideration of claims 1-6 and 8-9 rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nakajima et al., US 6,207,600 B, Applicant's remarks are not found persuasive for reasons set forth herein below.

***Claim Rejections - 35 USC § 102/103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-6 and 8-9 stand rejected under 35 U.S.C. 103(a) as obvious over Nakajima et al., US 6,207,600 B1.

Applicant argues that the calendared fabrics taught by Nakajima et al., cannot be compared to the calendared single woven fabric of the instant invention since Nakajima et al., is silent with respect to the calendaring process and apparatus. Applicant submits that the instant

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calendaring process (e.g., calendaring temperature, pressure in the nip and speed) provides for the instantly claimed air permeability characteristics. This argument is not found persuasive.

With respect to Applicant's argument that the prior art of Nakajima et al., is silent with respect to the calendaring process and apparatus, it is respectfully pointed out that Applicant has not set forth any limitations pertaining to the calendaring conditions and/or apparatus. Applicant merely claims a calendared woven fabric having desired air permeability characteristics. Thus, it is the position of the Examiner that Applicant's claims are not commensurate in scope with the claimed subject matter.

To reiterate, the patent issued to Nakajima et al., teach forming non-woven and knit fabrics from polyethylene fibers (Abstract, Title and Column 2, 55-57). With regard to the calendaring limitations, Nakajima et al., teach in examples 4 and 6 forming the non-woven fabric with calendaring (Column 15, 55-60 and Column 17, 31-35).

With specific regard to the woven limitation, Nikajima et al., teach in example 12, a woven fabric made from bi-component monofilaments (column 20, 18-column 21, 20). Nikajima et al., teach through-air heat treatment to melt the warp and weft strands rather than calendaring. Though, Nikajima et al., does not appear to exemplify calendaring the above woven fabric it is the position of the Examiner that Nikajima et al., does teach that knit and woven fabrics are known alternatives to non-woven fabrics. In other words, Nikajima et al., exemplifies forming woven, knits and non-woven fabrics from the composite filaments (column 2, 50-65 and example 12). In addition, it appears by the disclosure of Nikajima et al., that calendaring is a known alternative to through-air heat treatment (see example 6, column 30-35). As such, the

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Examiner asserts that it would be obvious to calendar any of the fabrics formed by Nikajima et al., including the woven fabric set forth in example 12.

With regard to claim 2, Nakajima et al., teach forming a non-woven fabric having a basis weight ranging from 5-2000 grams per square meter depending on desired end use (Column 9, 43-47).

With regard to claims 3-5, Nikajima et al., teach forming bi-component fibers with the novel polypropylene and other thermoplastic resins such as polyester or polyamide based resins. Nikajima et al., specifically teach forming bi-component fibers from polyethylene terephthalate, Nylon 6 or Nylon 66 (Column 10, 1-15).

With regard to claim 6, Nikajima et al., teach adding various additives to the polypropylene resin such as UV absorbing agents (Column 8, 49-55).

With regard to claim 9, Nikajima et al., teach forming various clothing, medical and/or disposable garments (Column 10, 16-34).

Although, Nikajima et al., does not explicitly teach the claimed permeability property it is reasonable to presume that said property is inherent to calendared fabrics formed by Nikajima et al., Support for said presumption is found in the use of like materials such as a woven fabric comprising synthetic bi-component filaments and the use of like processes such as calendaring, which result in the claimed permeability property. The burden is shifted to Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594

In addition, the presently claimed permeability property would have obviously been present once the non-woven fabric of Nikajima et al., is provided. *In re Best*, 195 USPQ 433

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 7 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Nakajima et al., US 6,207,600 B1 in view of JP 05148703 A.

Nakajima et al., fails to specifically teach the claimed ultraviolet absorbing agent, however, the published Japanese abstract teaches a cloth comprising conjugate fibers containing 1% by weight of the ultraviolet absorber titanium oxide (Abstract).

Therefore, motivated by the desire to provide a fabric with protection from ultraviolet rays it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the bi-component filaments taught by Nakajima et al., with the amount of titanium oxide ultraviolet absorbing agent taught in the published Japanese abstract.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 2003/0035951 A1

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M. Salvatore whose telephone number is 571-272-1482. The examiner can normally be reached on M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

December 9, 2005

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A handwritten signature in black ink, appearing to read "Linda Falarin". The signature is fluid and cursive, with the first name "Linda" and last name "Falarin" clearly distinguishable.